From:	Vick, Lindsay (EOIR)
To:	All of Judges (EOIR); All of OCIJ JLC (EOIR); McHenry, James (EOIR)
Cc:	Griswold, Stephen (EOIR); Vick, Lindsay (EOIR)
Subject:	Lee v. United States, No. 16-327, --- S. Ct ---, 2017 WL 2694701 (June 23, 2017).
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Attachments:	Lee v. United States_IAC_SCOTUS.pdf

***Lee v. United States*, No. 16-327, --- S. Ct ---, 2017 WL 2694701 (June 23, 2017).**

MAJORITY OPINION: C.J. ROBERTS (AUTHOR), J. KENNEDY, J. GINSBURG, J. BREYER, J. SOTOMAYOR, AND J. KAGAN

DISSENTING OPINION: J. THOMAS, WITH WHOM J. ALITO JOINED IN PART

ISSUES: Ineffective assistance of counsel

HOLDING: Petitioner established prejudice because he demonstrated a "reasonable probability that," but for counsel's erroneous advice, he would not have accepted a plea deal and would have gone to trial.

PRACTICAL EFFECT: A respondent can support an MTR based on IAC by showing he would have gone to trial instead of accepting a plea deal, but he does not need to show a likelihood of success at trial.

Facts: Petitioner was indicted on one count for possession of ecstasy with intent to distribute. Petitioner's attorney advised him to plead guilty and receive a lesser prison sentence. Prior to the plea, petitioner repeatedly asked his attorney about immigration consequences of the plea. The attorney told him he cannot be deported if he pleads guilty and deportation is not mentioned in the plea agreement; however, he could be deported if he went to trial and lost. Petitioner also raised his fear of deportation at the plea hearing with his attorney. While petitioner had a slim chance of acquittal at trial, he sufficiently established he would have gone to trial and risked a greater prison sentence for the slim chance of no deportation.

Majority: The majority held the petitioner demonstrated a "reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial," which is sufficient to show prejudice. Slip Op. at 6 (quoting *Hill v. Lockhart*, 474 U.S. 52, 59 (1985)). The majority clarified that *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficient performance are insufficient. Rather, Judges should instead look to contemporaneous evidence to substantiate a defendant's expressed preferences. Slip Op. at 10.

Dissent: The dissent would require petitioner to demonstrate but for his counsel's error, the result of the trial would have been different in order to establish prejudice. The dissent stated the petitioner would have faced "overwhelming" evidence of guilt at trial and therefore was not prejudiced by counsel's error.